

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MODESTA BENCOMO,

Plaintiff,

v.

FORSTER & GARBUS LLP, TD BANK
USA NA, and TARGET
CORPORATION,

Defendants.

Case No. 18-CV-1259-JPS

ORDER

On August 14, 2018, the plaintiff filed a complaint against defendant Forster & Garbus LLP (“Forster & Garbus”) alleging violations of the Fair Debt Collection Practices Act and the Wisconsin Consumer Act. (Docket #1). On September 19, 2018, Forster & Garbus filed a motion to dismiss the complaint for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket #7). On October 9, 2018, in lieu of responding to the motion, the plaintiff filed an amended complaint. (Docket #14); *see also* Fed. R. Civ. P. 15(a)(1) (permitting a party to “amend its pleading once as a matter of course within ... 21 days after service of a motion under Rule 12(b)[.]”). The amended complaint adds claims against defendants TD Bank USA NA and Target Corporation. (Docket #14 at 1–2, 24).

When an amended complaint is filed, it becomes the controlling pleading and the prior pleading is withdrawn. *Johnson v. Dossey*, 515 F.3d 778, 780 (7th Cir. 2008). Thus, the plaintiff’s amended complaint governs this case, and Forster & Garbus’ motion to dismiss the original complaint

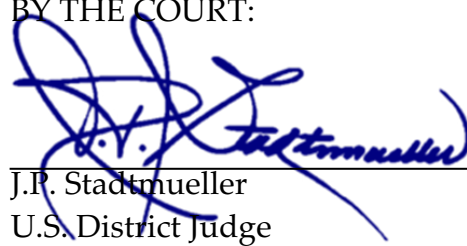
will be denied as moot. Forster & Garbus is free to file a motion to dismiss the amended complaint.

Accordingly,

IT IS ORDERED that the defendant Forster & Garbus' motion to dismiss the complaint (Docket #7) be and the same is hereby **DENIED as moot and without prejudice.**

Dated at Milwaukee, Wisconsin, this 16th day of October, 2018.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line. The signature is stylized and cursive.

J.P. Stadtmueller
U.S. District Judge